

Amendment No. 1 to SB3315

Johnson
Signature of Sponsor

AMEND Senate Bill No. 3315

House Bill No. 3372*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated § 50-6-102(17), is amended by deleting the subdivision in its entirety and by substituting instead the following language:

(17) "Utilization review" means evaluation of the necessity, appropriateness, efficiency and quality of medical care services, including the prescribing of any Schedule II, III, or IV controlled substances for a period of time of more than ninety (90) days cumulative from the initial prescription of such controlled substances, provided to an injured or disabled employee based on medically accepted standards and an objective evaluation of those services provided; provided, that "utilization review" does not include the establishment of approved payment levels, a review of medical charges or fees, or an initial evaluation of an injured or disabled employee by a physician specializing in pain management;

SECTION 2. Tennessee Code Annotated, Section 50-6-124, is amended by adding the following language as a new subsection (f):

(f) It is the intent of the general assembly to ensure the availability of quality medical care services for injured and disabled employees and to manage medical costs in workers' compensation matters by eradicating prescription drug abuse through the employment of the system established by subsection (a) to review any health care provider prescribing any Schedule II, III, or IV controlled substances to an injured or disabled employee for a period of time of more than ninety (90) days cumulative from the initial prescription of such controlled substances.

SECTION 3. Tennessee Code Annotated § 50-6-204, is amended by adding the following language as a new, appropriately designated subsection:

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(1) If a treating physician determines that pain is persisting for an injured or disabled employee beyond an expected period for healing, the treating physician may either prescribe, or refer, such injured or disabled employee for pain management encompassing pharmacological, non-pharmacological and other approaches to manage chronic pain.

(2)

(A) In the event that a treating physician refers an injured or disabled employee for pain management, the employee is entitled to a panel of qualified physicians as provided in subdivision (a)(4) except that, in light of the variation in availability of qualified pain management resources across the state, if the office of each qualified physician listed on the panel is located not more than one hundred seventy-five (175) miles from the injured or disabled employee's residence or place of employment, then the community requirement of subdivision (a)(4) shall not apply for the purposes of pain management.

(B) For the purposes of the panel required by subdivision () (2)(A), "qualified physician" shall mean an individual licensed to practice medicine or osteopathy in this state and:

(i) Board certified in anesthesiology, neurological surgery, orthopedic surgery, or physical medicine and rehabilitation through the:

(a) American Board of Medical Specialties

(ABMS); or

(b) American Osteopathic Association (AOA); or

(c) Another organization authorized by the
commissioner, or

(ii) Board certified by an organization listed in subdivision
(2)(B)(i)(a)-(c) in a specialty other than a specialty listed in
subdivision (2)(B)(i) who has completed an ABMS or AOA
subspecialty board in pain medicine or completed an Accreditation
Council for Graduate Medical Education (ACGMA) accredited pain
fellowship.

(3) The injured or disabled employee is not entitled to a second opinion
on the issue of impairment, diagnosis or prescribed treatment relating to pain
management. However, on no more than one (1) occasion, if the injured or
disabled employee submits a request in writing to the employer stating that the
prescribed pain management fails to meet medically accepted standards, then
the employer shall initiate and participate in utilization review as provided in this
chapter for the limited purpose of determining whether the prescribed pain
management meets medically accepted standards.

(4)

(A)

(i) As a condition of receiving pain management that
requires prescribing Schedule II, III, or IV controlled substances,
the injured or disabled employee shall sign a formal written
agreement with the physician prescribing the Schedule II, III, or IV
controlled substances acknowledging the conditions under which
the injured or disabled employee may continue to be prescribed
Schedule II, III, or IV controlled substances and agreeing to

comply with such conditions. The formal agreement shall include the condition that an employee submit to at least annual random drug testing at a certified laboratory for the purpose of identifying abuse or diversion of such substances. Such testing shall be performed in accordance with rules governing drug testing adopted by the commissioner of labor and workforce development pursuant to § 50-9-111.

(ii) For the purposes of this subdivision () (4)(A), a “certified laboratory” means any facility meeting the standards established by the department of labor and workforce development pursuant to § 50-9-111.

(B) For injuries occurring on or after July 1, 2012, if the injured or disabled employee refuses to sign the agreement required by () (4)(A) or violates any of the conditions of the agreement on more than one (1) occasion, then:

(i) The employee's right to pain management through the prescription of Schedule II, III, or IV controlled substances under this chapter shall be terminated and the injured or disabled employee shall no longer be entitled under this chapter to the prescription of such substances for the management of pain;

(ii) The refusal or violation shall be deemed to be misconduct connected with the employee's employment for purposes of § 50-6-241(d); and

(iii) In the event such refusal or violation occurs prior to a finding that the injured or disabled employee is totally disabled as provided in § 50-6-207(4), through either a judgment or decree entered by a court following a workers' compensation trial or a settlement agreement approved pursuant to § 50-6-206, the

incapacity to work due to lack of pain management shall not be considered when determining whether the injured employee is entitled to permanent total disability benefits as provided in § 50-6-207(4).

(C) A physician may disclose the employee's refusal to sign a formal written agreement and any violation of the formal written agreement on the physician's own initiative. Upon request of the employer, a physician shall disclose the employee's refusal to sign a formal written contract and any violation of the formal written agreement as provided in this section.

(D) The formal written agreement shall include a notice to the employee in capitalized bold lettering on the face of the agreement the consequences for failing to enter into the agreement or violating the terms of the agreement as provided for in this subsection ().

(E)

(i) If an employer terminates an injured or disabled employee's right under this chapter to pain management through the prescription of Schedule II, III, or IV controlled substances pursuant to alleged violations of the formal agreement as provided in subdivision ()(4)(B), then the employee may either file a:

(a) Request for assistance pursuant to § 50-6-238, if the benefit review conference requirement has not been exhausted, and a workers' compensation specialist shall determine whether such violations occurred; or

(b) Petition in a court of proper jurisdiction as provided in § 50-6-225, if the benefit review conference requirement has been exhausted, for a determination of whether such violations occurred.

(ii) If an employer or insurer alleges that an injured or disabled employee is not entitled to reconsideration under § 50-6-241(d) or permanent total disability benefits as provided in § 50-6-207(4) because of the employee's alleged violations of the formal agreement as provided in subdivision () (4)(B), then a court shall also determine whether such violations occurred.

(5) Prescribing one (1) or more Schedule II, III, or IV controlled substances for the treatment of an injured or disabled employee for more than ninety (90) days cumulative from the initial prescription of any such controlled substances is considered to be medical care services for the purposes of utilization review as provided in this chapter. The department is authorized to impose a fee for the administration of an appeal process for utilization review under this subdivision () (5) and subdivision () (3).

SECTION 4. This act shall take effect July 1, 2012, the public welfare requiring it, and shall apply to pain management prescribed on or after such date.